# SUPREME COURT OF THE UNITED STATES.

## No. 392.

THE STEAMBOAT M. BURNS, "HER TACKLE, &c.," PLAINTIFF IN ERROR,

vs.

THOMAS MORRISON & THOMAS F. McENNIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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*a* THE UNITED STATES OF AMERICA:

To THOMAS MORRISON and THOMAS F. MCENNIS, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the State of Missouri, wherein the steamboat M. Burns, her tackle, &c., is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable David Wagner, presiding judge of the Supreme Court of the State of Missouri, this sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

DAVID WAGNER,
*Presiding Judge Sup. C't Mo.*

Due notice and service hereof acknowledged this 16th day of November, 1867.

GEO. P. STRONG,
*Att'y for Thomas Morrison & Thomas McEnnis.*
THOS. MORRISON &
THOS. F. MCENNIS.
By THOS. MORRISON.

Endorsed: The Steamboat "M. Burns, &c.," plaintiff in error, *vs.* Thomas Morrison *et al.*, def't in error. Citation.

*b* UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the Supreme Court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court before you, at October term, A. D. 1867, between the steamboat M. Burns, her tackle, &c., appellant, and Thomas Morrison and Thomas F. McEnnis, respondents and appellees, a manifest error hath happened to the great damage of the said appellant, the steamboat M. Burns, her tackle, &c., as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further

to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this sixteenth of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued at office in the city of St. Louis, with the seal of the Circuit Court of the United States for the district of Missouri, dated as aforesaid.

[SEAL.] BEN. F. HICKMAN,
*Clerk C. C. U. S. Missouri District.*

Allowed by— DAVID WAGNER,
*Presiding Judge Sup. C't Mo.*

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the Supreme Court held at St. Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States, at Washington, a full, true, and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this twelfth day of December, A. D. 1867.

O. T. FISHBACK, *Clerk.*
Per E. P. McCARTHY, *D'y.*

Due notice and service hereof acknowledged this 16th day of November, 1867.

GEO. P. STRONG,
*Att'y for Thomas Morrison.*
THOS. MORRISON &
THOS. F. McENNIS.
By THOS. MORRISON.

Endorsed: Thomas Morrison *et al. vs.* St'mb't "M. Burns," pl'ff in error, *vs.* Thomas Morrison *et al.*, def't in error. Writ of error,

1 STATE OF MISSOURI, *ss:*
*County of St. Louis, ss:*

Be it remembered that heretofore, to wit, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and sixty-six, there was filed in the office of the clerk of the Circuit Court, within and for the county of St. Louis, a petition, which is in the words and figures following, to wit:

Circuit Court of said county, October term, 1866.

*Petition.*

THOMAS MORRISON & THOMAS F. Mc ENNIS, p'ff's,
*against*
THE STEAMBOAT M. BURNS, def't.

STATE OF MISSOURI, *County of St. Louis, ss:*

Plaintiffs, who are partners trading under the name and style of Thomas Morrison & Co., complain of defendant, a steamboat used in navigating the waters of the State of Missouri, and allege that on the twenty-seventh day of October, 1865, and on divers other days
2 thereafter, up to and including the 5th day of June, 1866, defendant became indebted to plaintiffs, partners as aforesaid, in the sum of thirteen hundred thirtys-even and 92-100 dollars, upon an open running account, for stores and supplies sold and delivered by plaintiffs to defendant for the use of said defendant, the particulars of which account, with the dates and prices, will more fully appear by reference to the bill of items herewith filed, marked "Exhibit A," and made part of this complaint.

That said boat is owned by the St. Louis, Cairo & Johnsonville Packet Company; and said demand accrued on account of said boat; that said stores and supplies were purchased by the agent of defendant at the dates and prices in said exhibit mentioned, the last items therein being sold and delivered on the said 5th day of June, 1866. By reason of the premises are entitled to and demand judgement with a lien upon said boat for said sum of thirteen hundred and thirty-seven 92-100 dollars with interest and costs.

3 GEO. P. STRONG,
*Att'y for Pl'ffs.*

Thomas Morrison, one of said plaintiffs, being duly sworn, says he believes the foregoing complaint and the matters therein and the account herewith filed to be correct and true as stated, and that the sum of thirteen hundred and thirty-seven 92-100 dollars is justly due plaintiffs after allowing all just credits and set offs for stores and supplies furnished by plaintiffs for the use of said boat.

THOMAS MORRISON.

Sworn to and subscribed before me on this twenty-first day of June, 1866.

[SEAL.] GEO. CENTRE BROWN,
*Notary Public.*

Which "Exhibit A" is in the words and figures following, to wit:

*Exhibit A, (1st bill.)*

THOMAS MORRISON. THOMAS MCENNIS.

ST. LOUIS, *Novb'r 22d*, 1865.

Steamer M. Burns bought of Thomas Morrison & Co., ship chandlers and dealers in boat stores, No. 20 north Levee, corner of Pine st.

THOMAS F. MCENNIS.

| | | | | |
|---|---|---|---|---|
| 4 | Oct. 27. | 2 kits mackerel, 3 00 | 6 00 | |
| | Nov. 8. | 1 S. B. lead, 5½ 20 | | 1 10 |
| | | 20 50d nails, 10 | | 2 00 |
| | | 20 8d " 10 | | 2 00 |
| | | 25 4½ boat spikes, 11 | | 2 75 |
| | Nov. 20. | 1 bbl. flour | 12 50 | |
| | " 22. | 1¾ sheet gum, 90 | | 1 57 |
| | | 1 keg W. lead best, 25, 17 | | 4 25 |
| | | 6 bars soap, 15, 12 | | 1 80 |
| | | 5 lbs. candles, 30 | | 1 50 |
| | | 6 cans lye, 30 | | 1 80 |
| | | 1 lbs. flour emery | | 30 |
| | | 1 pair compasses | | 75 |
| | | 1 paint brush | | 50 |
| | | 1 gall. lubricating oil | | 1 25 |
| | | 2 bbls. flour, 12 50 | 25 00 | |
| | | 5 hams, "new," 46, 33 | 15 18 | |
| | | 3 " "old," 30, 28 | 8 40 | |
| | | 40 lbs. brown coffee, 42 | 16 80 | |
| | | 15 lbs. ground rye, 5½ | 83 | |
| | | 50 lbs. N. O. sugar, 18 | 9 00 | |
| | | 50 lbs. clarif. " 21 | 10 50 | |
| | | 40 lbs. powd. " 23 | 9 20 | |
| | | 2 kits mackerel, 3 00 | 6 00 | |
| | | 1 bus. corn meal | 1 25 | |
| | | ½ bus. hominy, 225 | 1 13 | |
| | | 1 box 30 soap, 60, 12 | | 7 50 |
| | | 5 lbs. codfish, 12½ | 62 | |
| | | 1 peck salt | 35 | |
| | | 1 Bath brick | | 15 |
| | | ½ doz. matches | | 50 |
| | | 2 brooms, 60 | | 1 20 |
| | | 2 galls. vinegar, 50 | 1 00 | |
| | | 2 " alcohol, 5 25 | | 10 50 |
| | | 4 bottles ketchup, 40 | 1 60 | |
| | | 2 " pepper sauce, 35 | 70 | |
| | | 4 " Lon. club " 50 | 2 00 | |
| | | 2 " Worces. " 90 | 1 80 | |
| | | 2 lbs. pepper, 35 | 70 | |
| | | 1 sack table salt | 30 | |
| | | 1 doz. tomatoes | 4 00 | |

| | | |
|---|---|---|
| 1 " condensed milk | 4 75 | |
| ½ bus. dried apples, 4 00 | 2 00 | |
| 10 lbs. rice, 14 | 1 40 | |
| 1 doz. pie fruit | 5 50 | |
| 1 bar castile soap, 3½, 40 | | 1 40 |
| 4 scrub brushes, 40 | | 1 60 |
| 2 lbs. Y. H. tea, 1 85 | 3 70 | |
| 2 cans lye, 30 | | 60 |
| ¼ lbs. indigo | | 60 |
| 8 cans yeast powders, 35 | 2 80 | |
| 1 lb. soda | 25 | |
| 1 lb. acid | 1 80 | |
| 5 lbs. split peas, 13 | 65 | |
| ½ doz. corn, 4 75 | 2 38 | |
| ½ " peas, 4 75 | 2 37 | |
| 2 jars jelly, 1 00 | 2 00 | |
| 2 galls. mince meat, 2 50 | 5 00 | |
| 1 bbl. 200 coal oil, 38½, 90 | | 36 65 |
| 2 galls. syrup, 1 75 | 3 50 | |
| ½ box vermicelli | 1 25 | |
| ½ " maccaroni | 1 25 | |
| 1 paper starch, 6½, 13 | | 84 |
| 2 jars pickles, 1 25 | 2 50 | |
| ½ bus. beans, 2 25 | 1 13 | |
| 2 jars preserves, 1 50 | 3 00 | |
| 1 piece breakfast bacon, 13, 34 | 4 42 | |
| 1 " dried beef, 7, 25 | 1 75 | |
| 3 sponges, 13, 30 | | 3 90 |
| 1 bottle Chili pepper | 1 25 | |
| 2 bottles men's tea, 75 | 1 50 | |
| 12 shoulders, 1 46, 19 | 27 74 | |
| 3 jars onions, 50 | 1 50 | |
| 1 lead faucet | | 50 |
| ½ bbl. 100 lard oil, 20½, 2 60 | | 54 30 |
| 1 can lard, 45, 35 | 15 75 | |
| Stores | 236 00 | |
| Expenses | | 141 81 |
| Amount forward | | 377 81 |

*2d bill.*

THOMAS MORRISON. THOMAS MCENNIS.

ST. LOUIS, *Feb'y 10th*, 1866.

Steamer M. Burns bought of Thomas Morrison & Co., ship chandlers and dealers in boat stores, No. 20 north Levee, corner of Pine st.

| | | | |
|---|---|---|---|
| 7 | Amount forward | | 377 81 |
| Jan. | 29. 30 lbs. nails, 10-12, 10-20, 10-16, 11 | | 3 30 |
| | 30. lbs. boat spikes, 10-4, 10-6, 10-7, 12½ | | 3 75 |

| | | | |
|---|---|---|---|
| Feb. 1. | 6 2 in shives, 20 | | 1 20 |
| | 6. 1 keg best white lead, 50, 16 | | 8 00 |
| | 9. 300 feet 1¼ M. rope, 123, 27 | | 33 21 |
| | 300 feet 1 M. rope, 94, 27 | | 25 38 |
| | 3 sack needles | | 25 |
| | 1 hank sack twine | | 35 |
| | ½ doz. hick. handle brooms, 9 00 | | 4 50 |
| | 1 ball spun yarn, 8, 23 | | 1 84 |
| | 3 lbs. emery, 2-5, 1-0, 30 | | 90 |
| | 4 2-8 cot rope, 1 35 | | 5 91 |
| | 6 lbs. soap | | 75 |
| Feb. 10. | 2 papers brads, 20 | | 40 |
| | 3 bbls. flour, 13 00 | 39 00 | |
| | 12 shoulders, 139, 16 | 16 | |
| | 6 hams, 92, 24 | 22 08 | |
| | 1 piece dried beef, 11, 25 | 2 75 | |
| | 1 bus. hominy | 2 50 | |
| | 1 " beans | 2 25 | |
| | 20 lbs. rice, 13 50 | 2 70 | |
| | 1 bus. dried apples | 3 25 | |
| | 1½ doz. pie fruit, 5 25 | 7 38 | |
| | ½ " green peas, 2½ @ 5 00 | 2 50 | |
| | ½ " " corn, 4 50 | 2 25 | |
| | 1 " tomatoes | 3 00 | |
| | 70 lbs. N. O. sugar, 16½ | 11 55 | |
| | 50 lbs. clarif. " 18½ | 9 25 | |
| | 20 lbs. powd. sugar, 20½ | 4 10 | |
| 8 | 2 lbs. pepper, 40 | 8 00 | |
| | 2 lbs. mustard, 50 | 1 00 | |
| | ½ doz. ketchup, 4 00 | 2 00 | |
| | ½ " ass'd sauces, 7 00 | 3 50 | |
| | 1 bath brick | | 15 |
| | 1 ball c. wick | | 20 |
| | 1 lb. whiting | | 10 |
| | ½ lb. rotten stone | | 10 |
| | 2 galls. alcohol, 5 25 | | 10 50 |
| | 3 " vinegar, 50 | 1 50 | |
| | 3 " syrup, 1 75 | 5 25 | |
| | 3 botts. blueing, 10 | | 03 |
| | 1 paper starch, 5½, 15 | | 82 |
| | ½ lb. alum | 15 | |
| | 1 lb. soda | 25 | |
| | 1 lb. acid | 2 00 | |
| | 15 lbs. codfish, 15 | 2 25 | |
| | 2 kits mackerel, 3 25 | 6 50 | |
| | 3 sacks table salt, 30 | 90 | |
| | 1 bus. salt | 1 00 | |
| | 1 bus. corn meal | 1 25 | |
| | 1 doz. C. O. chimneys | | 1 75 |
| | 1 " " wick | | 30 |

| | | | |
|---|---|---|---|
| 6 bars fancy soap, 15 | | | 90 |
| 4 boxes blacking, 10 | | | 40 |
| 3 papers stove polish, 10 | | | 30 |
| ¼ lb. mace | | 60 | |
| ¼ lb. cassia | | 35 | |
| ¼ lb. nutmegs | | 60 | |
| ¼ lb. allspice | | 20 | |
| ¼ cloves | | 20 | |
| ½ box maccaroni | | 1 25 | |
| ½ " vermicelli | | 1 25 | |
| ½ doz. scrub brushes, 4 50 | | | 2 25 |
| 1 lb. sponge | | | 4 50 |
| ½ doz. extracts, 3 50 | | 1 75 | |
| 1 lb. bell line | | | 40 |
| 3 bottles pepper sauce, 35 | | 1 05 | |
| 1 doz. matches | | | 1 00 |
| Stores | 172 90 | | |
| Expenses | | | 113 71 |
| | | | 286 61 |
| Cr. by Mdse | | | 1 00 |
| | | | 285 61 |
| Am't forward | | | 663 42 |

*3d bill.*

THOS. MORRISON. THOS. MCENNIS.

ST. LOUIS, *Feb'y 24th*, 1866.

Steamer M. Burns bought of Thomas Morrison & Co., ship chandlers and dealers in boat stores, No. 20 north Levee, corner of Pine st.

| | | | |
|---|---|---|---|
| Am't forward | | | 663 42 |
| 30 lbs. nails, 10-8, 10-10, 10-12 | | | 3 30 |
| 1 bbl. flour, | | 12 50 | |
| ½ bus. hominy, 2 50 | | 1 25 | |
| 1 " beans | | 2 25 | |
| 10 25 lbs. rice, 13⅓ | | 3 38 | |
| ½ bus. dried apples, 3 50 | | 1 75 | |
| 3 bottles Worces. sauce, 60 | | 1 80 | |
| 3 " Lon. club " 50 | | 1 50 | |
| ¼ lb. allspice | | 20 | |
| 1 paper ground allspice | | 15 | |
| 1 bus. corn meal | | 1 25 | |
| 200 pickles, 1 75 | | 3 50 | |
| 2 galls. vinegar, 60 | | 1 20 | |
| ½ box vermicelli | | 1 25 | |

| | | | |
|---|---|---|---|
| ½ | " maccaroni | 1 25 | |
| 15 lbs. | codfish, 15 | 2 25 | |
| 1 kit | No. 1 mackerel | 3 75 | |
| 1 bottle | olive oil | 60 | |
| 2 lbs. | pepper, 40 | 80 | |
| ⅓ doz. | yeast powders 4 00 | 2 00 | |
| 1 paper | starch, 5½, 15 | | 79 |
| 2 galls. | alcohol, 5 25 | 10 50 | |
| 6 bars | fancy soap, 15 | | 90 |
| 2 bottles | cayenne pepper, 20 | 40 | |
| ½ doz. | tomatoes, 3 00 | 1 50 | |
| 4 brooms, | 65 | | 2 60 |
| 20 lbs. | oakum, 19 | | 3 80 |
| 50 lbs. | N. O. sugar, 16 | 8 00 | |
| 40 lbs. | clarif. " 18½ | 7 40 | |
| 20 lbs. | pow'd " 20½ | 4 10 | |
| 3 hanks | twine, 35 | | 1 05 |
| | 6 lbs. candles, 1 80; 6 lbs. soap, 72 | | 2 52 |
| 11 | 1 wash-board | | 60 |
| | 1 ball spun yarn, 9, 23 | | 2 07 |
| | Stores | 64 03 | |
| | Expenses | | 28 13 |
| | | | 92 16 |
| | Am't forward | | 755 58 |

*4th Bill.*

THOS. MORRISON. THOS. F. MCENNIS.

ST. LOUIS, *March 7th*, 1866.

STEAMER M. BURNS bought of Thos. Morrison & Co., ship Chandlers and dealers in boat stores, No. 20 North Levee, corner of Pine st.

| | | | |
|---|---|---|---|
| | Amount forward | | 755 58 |
| 8 lbs. | beeswax, 60 | | 4 80 |
| 2 " | cotton rope, 135 | | 2 70 |
| 2 " | black, 15 | | 30 |
| 5½ " | sheet gum, 110 | | 5 78 |
| 1 reel | packing yarn, 91, 23 | | 20 93 |
| ½ bus. | corn meal, 125 | 63 | |
| 6 bars | fancy soap, 15 | | 90 |
| 1 doz. | pie fruit | 5 25 | |
| ½ doz. | tomatoes, 2½, 4,00 | 2 00 | |
| 3 cans | corn | 1 23 | |
| 3 do. | peas | 1 12 | |
| 1 gall. | alcohol | | 5 25 |
| 1 bus. | dried apples | 3 50 | |
| 40 lbs. | N. O. sugar, 16 | 6 40 | |

| | | | | |
|---|---|---|---|---|
| 12 | 30 | " clarif. sugar, 18½ | 5 55 | |
| | 20 | " powd. 20½ | 4 10 | |
| ¼ doz. yeast powders, 400 | | | 1 00 | |
| 1 gall. vinegar | | | 60 | |
| 10 lbs. cream crackers, 15 | | | 1 50 | |
| 10 | " candles, 26 | | | 2 60 |
| 4 pair 1½ butts and screws | | | | 1 00 |
| 2 cupboard locks, 35 | | | | 70 |
| 2 saw files, 25 | | | | 50 |
| 1¼ lbs. 1-16 sheet gum, 1,35 | | | | 1 69 |
| Stores | | | 32 78 | |
| Expenses | | | | 47 15 |
| | | | | 79 93 |
| Amount forward | | | | $835 51 |

*5th Bill.*

THOS. MORRISON. THOS. F. MCENNIS.

ST. LOUIS, *March* 23*d*, 1866.

STEAMER M. BURNS bought of Thos. Morrison & Co., ship chandlers & dealers in boat stores, No. 20 North Levee, corner of Pine st.

| | | | |
|---|---|---|---|
| | Amount forward | | 835 51 |
| 8. | ½ doz. matches | | 50 |
| 22. | 20 do. wr't spikes, 12 | | 2 40 |
| 10 lbs. 20d nails, 11 | | | 1 10 |
| 10 | " barrel nails, 12½ | | 1 25 |
| 4 | " brown coffee, 35 | 1 40 | |
| | 150 ft. ¾ M. rope, 31, 26 | | 8 06 |
| 13 | Repairing pennant strap, 25, 42 | | 10 50 |
| | 10 lbs. 3-8 tarred rope, 23 | | 2 30 |
| 1¾ lbs. bell line, 40 | | | 70 |
| 23. | 1 bus. dried apples | 3 75 | |
| 75 lbs. N. O. sugar, 15½ | | 11 63 | |
| 50 lbs. clarif. sugar, 18 | | 9 00 | |
| 2 galls. alcohol, 5,00 | | | 10 00 |
| 1 bus. salt | | 1 00 | |
| 2 sacks table salt, 30 | | 60 | |
| ½ doz. ass'd extracts, 3,50 | | 1 75 | |
| 1 do. 2 hoop buckets | | | 4 00 |
| 2 bbls. flour, 1,200 | | 24 00 | |
| 4 brooms, 60 | | | 2 40 |
| 4 scrub brushes, 40 | | | 1 60 |
| 3 bottles blueing, 10 | | | 30 |
| 3 sponges, 5 oz., 30 | | | 1 50 |

| | | | |
|---|---|---|---|
| 2 cans lye, 30 | | | 60 |
| 4 bottles sauce, 60 | | 2 40 | |
| 4 boxes blacking, 10 | | | 40 |
| 10 lbs. codfish, 12½ | | 1 25 | |
| 1 kit mackerel | | 3 00 | |
| 1 bus. beans | | 2 25 | |
| ½ bus. hominy, 2,50 | | 1 25 | |
| 15 lbs. rice, 13½ | | 2 02 | |
| 1 bus. corn meal | | 1 25 | |
| ½ box maccaroni | | 1 25 | |
| ½ do. vermicelli | | 1 25 | |
| 1 do. soap 60, 11 | | | 6 60 |
| 1 gall. vinegar | | 60 | |
| 14 1 gall. syrup | | 1 60 | |
| 1 keg white lead, 25, 12 | | | 3 00 |
| 3 yds. canvas, 65 | | | 1 95 |
| 1 lbs. O. emery | | | 30 |
| 10 lbs. soap, 11 | | | 1 10 |
| 4 lbs. beeswax, 60 | | | 2 40 |
| ½ doz. core lye, 3,50 | | | 1 75 |
| 5,00 ft. 2 in. Manilla rope, 6,10, 26 | | | 148 60 |
| Stores | | 71 25 | |
| Expenses | | | 223 31 |
| | | | 294 56 |
| Am't forward | | | 1, 130 07 |

*6th Bill.*

THOS. MORRISON. THOS. F. MCENNIS.

ST. LOUIS, *March* 23*d*, 1866.

STEAMER M. BURNS bought of Thos. Morrison & Co., ship chandlers and dealers in boat stores, No. 20 North Levee, corner of Pine st.

| | | | |
|---|---|---|---|
| Amount forward | | | 1, 130 07 |
| 1 hand saw | | 2 25 | |
| 1 rip saw | | 3 25 | |
| 1 double jack plane | | 1 60 | |
| 1 " smooth plane | | 1 50 | |
| 4 chisels | | 3 50 | |
| 1 hatchet | | 1 25 | |
| 15 3 auger handles | | 30 | |
| 1 brace | | 1 50 | |
| 3 augers | | 3 35 | |
| 4 bits | | 1 50 | |
| 2 law files, 20 | | 40 | |
| 1 try square | | 65 | |

| | | |
|---|---|---|
| 1 iron square | 1 50 | |
| 1 2 ft. rule | 75 | |
| 1 ship axe & handle | 4 25 | |
| 1 ship maul & handle | 3 25 | |
| 1 ship adge & handle | 4 00 | 34 80 |
| Am't forward | | $1,164 87 |

*7th Bill.*

THOS. MORRISON. THOS F. MCENNIS.

ST. LOUIS, *April* 4, 1866.

STEAMER M. BURNS bought of Thos. Morrison & Co., ship chandlers and dealers in boat stores, No. 20 North Levee, corner of Pine st.

| | | | |
|---|---|---|---|
| Amount forward | | | $1,164 87 |
| 3. 15 lbs. wrot spikes, 12 | | | 1 80 |
| 5 lbs. cut spikes, 11 | | | 55 |
| 4. 1 doz. scrub brushes | | | 4 75 |
| ½ doz. hick brooms, 3,00 | | | 1 50 |
| 3 draw buckets, 85 | | | 2 55 |
| 2½ lbs. M. rope, 26 | | | 65 |
| 16 2¼ lbs. tarred rope, 23 | | | 52 |
| ½ box, 30 star candles, 20, 23 | | | 4 90 |
| 50 lbs. N. O. sugar, 15½ | 7 75 | | |
| 75 lbs. clarif. sugar, 17½ | 13 12 | | |
| 25 lbs. powd. sugar, 19½ | 4 88 | | |
| 6 bottles sauce, 60 | 3 60 | | |
| 1 bottles pepper sauce | 40 | | |
| 1 kit mackerel | 3 00 | | |
| 2 doz. cans vegetables, 4,50 | 9 00 | | |
| 2 doz. pie fruit, 5,25 | 10 50 | | |
| 2 galls. alcohol, 5,00 | | | 10 00 |
| 1 bbl. coal oil, 40½, 66 | | | 26 73 |
| ½ box maccaroni | 1 25 | | |
| 2 galls. syrup, 1,55 | 3 10 | | |
| 2 galls. vinegar, 60 | 1 20 | | |
| ½ doz. brooms, 6,50 | | | 3 25 |
| ½ doz. yeast powders, 3,75 | 1 88 | | |
| ½ doz. matches | | | 50 |
| ½ lbs. sponges | | | 2 25 |
| 2 doz. C. O. wick | | | 50 |
| 1 bus. dried apples | 3 75 | | |
| 1 lbs. isinglass | 1 25 | | |
| 3 botts. pepper sauce, 30 | 90 | | |
| 2 bbls. flour, 12,00 | 24 00 | | |
| 1 ball spun yarn, 12, 23 | | | 2 76 |
| ½ doz. sack needles | | | 50 |
| 1 sail needle | | | 05 |

| | | | |
|---|---|---|---|
| | 1¼ lbs. sheet gum, 1,35 | | 1 69 |
| 17 | Stores | 87 58 | |
| | Expenses | | 65 45 |
| | | | 155 03 |
| | Am't forward | | $1,319 90 |

*8th Bill.*

THOS. MORRISON. THOS. F. MCENNIS.

ST. LOUIS, *April* 17, 1866.

STEAMER M. BURNS bought of Thos. Morrison & Co., ship chandlers, and dealers in boat stores, No. 20 North Levee, corner of Pine st.

| | | | |
|---|---|---|---|
| | Amount forward | | $1,319 90 |
| 14. | 15 lbs. nails, 4, 6, and 8, 10 | | 1 50 |
| | 1 doz. screws, 15; 1 saw file, 25; 1 pr. hinges and screws, 40 | | 80 |
| 16. | 50 lbs. N. O. sugar, 15½ | 7 75 | |
| | 40 lbs. clarif. do 17½ | 7 00 | |
| | 10 lbs. powd. do 19½ | 1 95 | |
| | 1 bus. beans | 2 25 | |
| | ½ do hominy, 2 25 | 1 13 | |
| | 25 do rice, 13½ | 3 38 | |
| | ½ bus. corn meal, 1 00 | 50 | |
| | 2 bbls. flour, 13 00 | 26 00 | |
| | 2 gall. alchohol, 5 00 | | 10 00 |
| | 2 do vinegar, 60 | 1 20 | |
| | 1 bottle Chili pepper | 1 00 | |
| | 1 bottle olive oil | 60 | |
| 18 | ½ doz. scrub brushes, 4 75 | | 2 38 |
| | 1 do vegetables, 4 50; 1 lb. sago, 30 | 4 80 | |
| | 1 topioca | 35 | |
| | 2 lbs. barley, 15 | 30 | |
| | 1 bus. salt | 1 00 | |
| | 2 cans lye, 30 | | 60 |
| | 1 bot. ext. vanilla, 35; 2 bott's ext. lemon, 60 | 95 | |
| | ½ doz. yeast powders, 3 75 | 1 88 | |
| | ¼ do amonia, 20; ¼ lb. nutmegs, 50 | 70 | |
| | ¼ lb. cloves, 20; ¼ lb. mace, 50 | 70 | |
| | 1 kit No. 2 mackerel | 3 00 | |
| | 3 papers stove polish, 10 | | 30 |
| | 4 boxes blacking, 10 | | 40 |
| | 1 stove brush | | 50 |
| | 1 piece dried beef, 8, 23 | 1 84 | |
| | ½ doz. matches, 50 | | 50 |
| | 4 lbs. currants, 25 | 1 00 | |

| | | |
|---|---|---|
| 17. 3 axes, 2 00 | | 6 00 |
| 1 doz. 3 hoop buckets, 4 50; 1 doz. lamp chimneys, 1 75 | | 6 25 |
| 1 dust brush and pan | | 90 |
| Stores | 69 28 | |
| Expenses | | 30 13 |
| | | 99 41 |
| Am't forward | | $1,419 31 |

19 *9th Bill.*—E.

THOS. MORRISON. THOS. F. MCENNIS.

ST. LOUIS, *May* 23, 1866.

STEAMER M. BURNS bought of Thos. Morrison & Co., ship chandlers and dealers in boat stores, No. 20 North Levee, corner of Pine st.

| | | |
|---|---|---|
| Am't forward | | $1,419 91 |
| 21. 1 seam brush | | 25 |
| 1 keg w. lead, 25, 11 | | 2 75 |
| 22. 1 keg w. lead, 25, 11 | | 2 75 |
| $2\frac{3}{4}$ lbs. $\frac{1}{4}$ in. sheet gum, 1 00 | | 2 75 |
| $1\frac{1}{2}$ do 1-16 in. do do 1 25 | | 1 88 |
| 3 do emory flour, 30 | | 90 |
| $\frac{1}{2}$ doz. cans lye, 3 50 | | 1 75 |
| 10 lbs. soap, 11 | | 1 10 |
| 5 do candles, 28 | | 1 40 |
| 1 large coal shovel | | 2 50 |
| 23. 2 bbls. flour, 14 | 28 | |
| 10 shoulders, 141, 15 | 21 15 | |
| 4 hams, 50, 25 | 12 50 | |
| 1 bus. corn meal | 1 00 | |
| 1 keg lard, 9-6, 75, 25 | 18 75 | |
| 20 lbs. 4 in. wrought spikes | | 2 20 |
| 10 do nails, 5-8, 5-12, 10 | | 1 00 |
| 1 bale oakum | | 8 50 |
| 2 saw files, 25 | | 50 |
| 1 mop | | 1 25 |
| 1 lb. mustard | 50 | |
| 2 pieces breakfast bacon, 27, 24 | 6 48 | |
| 20 2 sacks table salt, 30 | 60 | |
| 1 bale C. wick | | 20 |
| 1 jar horse radish | 75 | |
| Stores | 89 73 | |
| Expenses | | 31 68 |
| | | 121 41 |

| | | |
|---|---|---|
| 3 lbs. lead line, 40 | | 1 20 |
| 1 brass lantern | | 5 00 |
| | | 127 61 |
| 1 mop not rec'd | | 1 25 |
| | | 126 37 |
| Amount forward | | $1,545 67 |

*10th Bill.*

THOS. MORRISON. THOS. F. MCENNIS.

ST. LOUIS, *June* 6, 1866.

STEAMER M. BURNS bought of Thos. Morrison & Co., ship chandlers, and dealers in boat stores, No. 20 North Levee, corner of Pine st.

| | | | |
|---|---|---|---|
| Am't forward | | | $1,545 67 |
| 4. 6 gall's lard oil, 2 | 12 00 | | |
| 2 cans | 1 75 | | |
| 5. 5 gall's coal oil, 70 | 3 50 | | |
| 1 lb. sponge | 4 50 | | |
| 1 pastry brush | 50 | | 22 25 |
| | | | 1,576 92 |
| Cr. By part of note paid | | | 230 00 |
| | | | $1,337 92 |

21 THOMAS MORRISON and THOS. F. MCENNIS *against* STEAMBOAT M. BURNS.

Thos. Morrison, one of the plaintiffs in the above-entitled cause, being duly sworn, says he believes the above account and the matters therein as stated to be correct and true.

THOS. MORRISON.

Sworn to and subscribed before me this 21st day of June, 1866.

[SEAL.] GEO. CENTRE BROWNE,
*Notary Public.*

And, together with said petition, a bond was filed in the words and figures following, to wit:

*Bond.*

Know all men by these presents that we, Thomas Morrison, as principal, and Henry C. Yeager, as security, are indebted to the State of Missouri in the sum of twenty-eight hundred dollars, for the

payment whereof we bind ourselves, our heirs, executors, and
22 administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at St. Louis this twenty-first day of June, eighteen hundred and sixty-six.

The condition of the above obligation is such, that whereas, Thomas Morrison and Thomas F. McEnnis, partners under the name of Thos. Morrison & Co., are about to institute a suit in the St. Louis Circuit Court, by attachment, against the steamboat M. Burns, def't, for the sum of thirteen hundred and thirty-seven 92-100 dollars: Now, if the plaintiffs shall prosecute their suit with effect, or pay all damages that may accrue to the boat or vessel, or the owners or officers thereof, by reason of said attachment, or any process or proceedings in said suit, then this obligation to be void; otherwise to remain in full force.

[SEAL.] THOS. MORRISON.
[SEAL.] HENRY C. YEAGER.

Approved.
June 21, 1866.

F. A. H. SCHNEIDER, *Cl'k.*

23 Whereupon, on the same day, to wit, June 21, 1866, a warrant issued in the words and figures following, to wit:

*Warrant.*

STATE OF MISSOURI, *County of St. Louis, ss:*

To the sheriff of St. Louis county, greeting:

Whereas Thomas Morrison and Thomas F. McEnnis have this day filed in the office of the clerk of the Circuit Court for the county aforesaid, their complaint in writing, stating that they have a demand against the steamboat M. Burns for the sum of thirteen hundred thirty-seven dollars ninety-two cents, which accrued against said boat on account of the agent thereof as in said complaint hereto annexed is set forth in all its particulars, and which said sum of thirteen hundred thirty-five dollars 92 cents is the sum sworn to in said complaint. These are therefore to authorize and direct you forthwith to seize the said steamboat M. Burns, with her tackle, apparel, and furniture, or so much thereof as will be sufficient to
pay said sum of thirteen hundred thirty-seven dollars and 92
24 cents, with all costs, and detain her until discharged by due course of law; and how you shall execute this warrant make return to our said court on the first day of the next term thereof, to be begun and held at the city of St. Louis, within and for the county aforesaid, on the first Monday of October next, and have you then and there this writ.

Witness Frank A. H. Schneider, clerk of said court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this twenty-first day of June, eighteen hundred and sixty-six.

[SEAL.] F. A. H. SCHNEIDER, *Cl'k.*

Upon the back of which warrant the sheriff made the following return, to wit:

*Sheriff's return.*

Executed this writ, in the county of St. Louis, on the 21st day of June, 1866, by seizing and taking into my custody the steamboat M. Burns, her machinery, tackle, apparrall, &c.

25 JOHN C. VOGEL, *Sheriff.*
By JACOB L. WEYAND, *Dep'y.*

Fee, $150.

And afterwards, on the 30th day of June, 1866, the following application for an order of sale was filed by the sheriff, to wit:

Circuit Court St. Louis county.

*Sheriffs application for order of sale.*

THOS. MORRISON *et al.* *vs.* STEAMER M. BURNS. } Warrants 137, 148, and 153, to October term, 1866.

To the honorable judges of the Circuit Court of St. Louis county:

John C. Vogel, sheriff of St. Louis county, State of Missouri, comes here and represents that, by authority of the above-recited writs, I did, on the 21 day of June, 1866, in the county of St. Louis, State of Missouri, seize and take into my custody the steamer M. Burns, her hull, engine, tackle, apparel, and furniture; and more than five days have elapsed since said boat was seized, no bond having been filed for the release of said boat. I therefore respectfully ask that an order of sale be granted to sell said boat, with her tackle,

26 apparel, and furniture.

JOHN C. VOGEL, *Sh'ff.*
THEODORE LA BEAUME, *D'p.*

St. Louis, June 30, 1866.

And on the same day the following order was granted, to wit:

*Order of sale.*

In the matter of the steamboat M. Burns.

John C. Vogel, esq., sheriff of St. Louis county, files a statement, from which it appears that he has seized the steamboat "M. Burns," under two several warrants therein named, and that five days have elapsed since said seizure, and no person has given bond for the release of said boat. It is therefore ordered that said sheriff proceed to sell said boat, according to law, for cash, to the highest bidder, first giving twenty days notice of the time and place of sale by publication, according to law, in newspapers printed in the city of St. Louis.

27 And afterwards the following report of sale by the sheriff was filed, to wit:

Circuit Court of St. Louis county.

*Report of sale by sheriff.*

THOMAS MORRISON *et al.* *vs.* STEAMER M. BURNS. } Warrants 137, 148, No. 153, returnable to October term, 1866.

John C. Vogel, sheriff of St. Louis county, State of Missouri, comes here into court and makes a report of all his acts and proceedings, under the order of sale hereto attached, made on the 30th day of June, 1866, pursuant to said order, I did, on the 30th day of June, 1866, , cause the personal property, attached in the above-entitled case to be advertised in the manner prescribed by law, by advertisements in two newspapers published in the city of St. Louis, State of Missouri, at least 20 days prior to the day of sale hereinafter mentioned, a copy of which advertisement is hereto attached and made part of this report.

And agreeably to said advertisement, I did, on Tuesday, the 24th day of July, 1866, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at east front
28 door of the court-house, in the city of St. Louis, State of Missouri, sell all the personal property, and being the steamer M. Burns described in said advertisement, to the highest bidder for cash for the sum of five thousand nine hundred dollars, ($5,900 00,) all of which is respectfully submitted to the court for approval.

St. Louis, July 25, 1866.

JOHN C. VOGEL, *Sh'ff.*
THEODORE LABAUME, *D.*

*Charges.*

| | |
|---|---|
| Executing order of court and report of sale | 5 75 |
| Advertising in two papers | 41 40 |
| Commission on sales | 125 50 |
| Cash, watchman's fees | 102 00 |
| Towing boat and labor | 27 50 |
| | $302 15 |

Which copy of advertisement is in the words and figures following, to wit:

Circuit Court of St. Louis county.

*Advertisement referred to in sheriff's report.—Sheriff's sale.*

THOS. MORRISON *et al.* *vs.* STEAMER M. BURNS. } Warrants No. 137, 148 & 153, to October term, 1866.

By virtue and authority of an order of sale issued from the clerk's office of the Circuit Court of St. Louis county in the above-
29 entitled cause, and to me directed, I will, on Tuesday, 24th day of July, 1866, between the hours of nine o'clock in the forenoon, and five o'clock in the afternoon of that day, at the east front door of the court-house, in the city of St. Louis, State of Missouri, sell at public vendue, to the highest bidder for cash, the steamer M. Burns, her hull, engine, tackle, apparel and furniture.

JOHN C. VOGEL, *Sheriff.*

St. Louis, June 30, 1866.

And afterwards, on the 4th day of August, 1866, the following order was made in said cause, to wit:

*Order to give notice to creditors.*

In the matter of the steamboats M. Burns, Grey Eagle, Mc C. Porter, Leonora, Laura, Fanny Barker, North Alabama, C. J. Caffrey, Silver Wave, Louisa, and Milbrey.

The sheriff of St. Louis county having made report of the sale of the steamboats M. Burns, Grey Eagle, Mc C. Porter, Leonora, Laura, Fanny Barker, North Alabama, C. J. Caffrey, Silver Wave, Louiss and Milbrey, it is ordered that on the 5th day of Octo-
tober, eighteen hundred and sixty-six, all creditors of said boats,
30 having a lien upon the same, shall appear and exhibit their demands in this court against said boats; and it is further ordered that the clerk of this court cause notice of said appointment to be given to the creditors of the boats by publication, according to law and the rules of this court.

And afterwards, on the 8th day of October, A. D. 1866, the defendant filed an answer in the words and figures following, to wit:

In St. Louis Circuit Court, Oct. T., 1866.

*Answer.*

THOMAS MORRISON *et al.* *vs.* STEAMBOAT M. BURNS. }

Now comes said defendant, by Adolph Heinicke, its owner, and denies any knowledge or information sufficient to form a belief

whether at the dates named in the said petition, or at any other times, defendant became or is indebted to said plaintiffs in said sum or any sum, for stores or supplies, or upon any open running accounts, or for supplies delivered to or for the use of said defendant, or whether said account is true or correct in any
31 particular, or whether any stores were purchased by the agent of said boat. Defendant denies that said boat is owned by the St. Louis, Cairo & Johnsonville Packet Company, and that said account accrued on account of said boat, and denies all liability. Defendant avers that, at the times named in the complaint, plaintiffs were stockholders in the St. Louis, Cairo & Johnsonville Packet Company, a corporation then owning said boat; that they received in payment of said demand the endorsed notes of said corporation, and that said lien, if any existed, was discharged and said demand settled. And defendant asks to go hence with costs.

RANKIN & OGDEN, *Pd.*

Adolph Heinicke, owner of said boat, being duly sworn, on his oath, says the foregoing answer and matters therein he believes to be true.

ADOLPH HEINECKE.

Sworn to before me Oct. 8th, 1866.

F. A. H. SCHNEIDER, *Cl'k.*

And on the 18th day of October, A. D. 1866, the following proofs of publication of creditors' notice were filed, to wit:

In the St. Louis Circuit Court, of the June term, 1866.

32 *Proof of publication in Missouri Republican.*

Creditors' notice.—In the matter of the steamboats M. Burns, Gray Eagle, McC. Porter, Leonora, Laura, Fannie Barker, North Alabama, C. J. Caffrey, Silver Wave, Louisa, and Milbrey.

In pursuance of an order of the St. Louis Circuit Court, public notice is hereby given to all creditors having a lien or liens against the said steamboats M. Burns, Grey Eagle, McC. Porter, Leonora, Laura, Fannie Barker, North Alabama, J. C. Caffrey, Silver Wave, Louisa, and Milbrey, under the act entitled "An act concerning boats or vessels," approved Nov. 29, 1855, that they are hereby required to file with the clerk of said court, on the 4th day of October next, at the court-house, in the city and county of St. Louis, their demands against the said steamboats, and on the succeeding day, establish the validity thereof under the provisions of
33 the said act, at which time and place all parties in interest may appear and be heard before said court.

In testimony whereof, I hereto set my hand and affix the seal of said court at office, in the city of St. Louis, this 21st day of August, A. D. 1866.

Au. 22—30 d.

[SEAL] F. A. H. SCHNEIDER, *Cl'k.*

STATE OF MISSOURI, *County of St. Louis:*

Personally appeared before me the undersigned, a notary public within and for the said county of St. Louis, John Knapp, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Republican," a newspaper printed and published in the city and county of St. Louis, State of Missouri, of which he is the printer, for five times, the first insertion being on the twenty-fourth day of August, 1866, and the last on the twenty-first day of September, 1866, as follows:

| | | |
|---|---|---|
| In No. 202 | Aug. 24, | 1866. |
| " 208 | " 31, | " |
| " 214 | Sept. 7, | " |
| " 220 | " 14, | " |
| " 226 | " 21, | " |

34 JOHN KNAPP.

Sworn to and subscribed before me this twenty-first day of September, 1866.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, at office, in St. Louis, the day and year last above written.

[SEAL.] D. G. JONES,
*Notary Public St. Louis County, Mo.*

*Same in Westliche Post.*

In the St. Louis Circuit Court, of the June term, 1866.

Creditors' notice.—In the matter of the steamboats M. Burns, Grey Eagle, McC. Porter, Leonora, Laura, Fanny Barker, North Alabama, C. J. Coffrey, Silver Wave, Louisa, and Milbrey.

In pursuance of an order of the St. Louis Circuit Court, public notice is hereby given to all creditors having a lien or liens against the said steamboats M. Burns, Gray Eagle, McC. Porter, Leonora, Laura, Fannie Barker, North Alabama, C. J. Caffrey, Silver Wave, Laura, and Milbrey, under the act entitled "An act concern-
35 ing boats or vessels," approved Nov. 29, 1855, that they are hereby required to file with the clerk of said court, on the 4th day of October next, at the court-house, in the city and county of St. Louis, their demands against the said steamboats, and on the succeeding day establish the validity thereof under the provisions of the said act, at which time and place all parties in interest may appear and be heard before said court.

In testimony whereof, I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 21st day of August, 1866.

22 Au. 30. F. A. H. SCHNEIDER, *Clerk.*

STATE OF MISSOURI, *County of St. Louis, ss:*

Personally appeared before me the undersigned, a notary public within and for the county aforesaid, Theodore Plate, one of the publishers of the Westliche Post, of the State and county aforesaid, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the Westliche Post the time below specified, on the following days and in the following numbers, viz:

| | | | |
|---|---|---|---|
| 36 | Aug. | 22, 1866 | No. 196 |
| | | 23, " | 197 |
| Aug. | 24, | " | 198 |
| | 25, | " | 199 |
| | 26, | " | 34 |
| | 27, | " | 200 |
| | 28, | " | 201 |
| | 29, | " | 202 |
| | 30, | " | 203 |
| | 31, | " | 204 |
| Sept. | 1, | " | 205 |
| | 2, | " | 35 |
| | 3, | " | 206 |
| | 4, | " | 207 |
| | 5, | " | 208 |
| | 6, | " | 209 |
| | 7, | " | 210 |
| | 8, | " | 211 |
| | 9, | " | 36 |
| | 10, | " | 212 |
| | 11, | " | 213 |
| | 12, | " | 214 |
| | 13, | " | 215 |
| | 14, | " | 216 |
| | 15, | " | 217 |
| | 16, | " | 37 |
| | 17, | " | 218 |
| | 18, | " | 219 |
| | 19, | " | 220 |
| | 20, | " | 221 |

THEODORE PLATE.

Sworn to and subscribed before the undersigned this twenty-seventh day of Sept., 1867.

[SEAL.]

ARTHUR OLHAUSEN,
*Notary Public.*

[5-cts. stamp.]

And afterwards, on the 10th day of November, the following proceedings were had, to wit:

*Hearing of Claims.*

In the matter of the steamboat M. Burns.

37 This being the day to which the hearing of claims against the steamboat M. Burns had been continued, and it being proven to the court, from the affidavits herein, that the notice to creditors had been duly published in conformity with the order made herein, the following named persons come and exhibit their demands to the court; and the same being by them respectively submitted to the court, and being fully proven, and the validity of the same being established, the court doth award judgment in favor of said claimants, as follows, and finds that their demands belong to the first class of liens against said boat, viz:

Charles Walter, $5 00; John Mengens, $5 00; Jacob Gieg, $5 00; Frank Kintzler, $5 00; John Holland, $5 00; Michael Suttler, jr., $12 00; Nicholas Bauer, $5 00; Jacob Stemmbrenner, $5 00; John Blaes, $5 00; John Blumer, $5 00; Chas. Hoffman, $5 00;

38 Henry Schaerf, $5 00; Jacob Mueller, $5 00; Michael Schmitt, $5 00, George Reith, $3 00; Fred. Hilbert, $5 00; John Mathias, $5 00; Thomas McCantles, $5 00; Frank Hoffstaetler, $5 00; Charles Seifart, $5 00; Thomas D. Dunnill, $25 00; John Keller, $5 00; Jacob Lunde, $3 50; B. Ludeman, $3 50; Nicholas Bedinger, $5 00; Joseph Bohr, $5 00; Fred Retmeyer, $5 00; George Mueller, $3 50.

And thereupon the following named persons appear, by their respective attorneys, and exhibit their demands; and the same being by them respectfully submitted to the court, and being fully proven, and the validity of the same established, the court doth award judgement in favor of said claimants as follows, and finds that their demands belong to the second class of liens against said boat,

39 viz: Joseph Garneau & Co., $87 87; Geo. Wharton & Co., $50 80; McCaw & Teasdale, $27 30; Hezel & Teasdale, $7 90; John and Edward Ring, $84 90; James Aiken & James S. Raynolds, $208 76; Joseph Gartsides, $175 91; R. C. McCord & Co., $199 00; John E. Oxley & Co., $98 00; St. Louis Tarpaulin Company, $12 75; J. W. Kingsworth, $43 00; Kelly & Langwith, $32 54; Heinicke & Estel, $36 05; R. C. Van Duzen & Co., $73 47; James A. Jackson *et al.*, $277 04; R. C. McCord, jr., $13 50; August Nedderhut. $127 80; Morris & John Hetzel, $22 35; John T. Tillay & Co., $91 80; Boos & Bonsack, $30 62; John Cummings, $22 00; H. & A. Menown, $53 60; B. S. Bell, $15 10; Raynor, Webb & Co., $19 85; George Frederick, $45 75; Gordon & Griffin, $30 64; Kupferle & Roswell, $17 82; Louis Finkman, $81 30; R. C. McCord,

40 $48 05.

And the the court doth find that the following claim belongs to the fourth class of liens against said boat, and doth allow judgement as follows:

In favor of J. B. Reutchler, for ..... $50 00

And thereupon the claims of the press association and Aiken & Co. are submitted to the court, and the court being fully advised of and concerning the same, doth reject said claims, and order that the said claimants pay the costs accrued therein; and thereupon the claims of Gibbons & Epperson, Morrison & McEnnis, and Cavender & Rowse, are submitted to the court, but the court not being fully advised of and concerning the same takes time to consider thereof.

And on the 13th day of November, 1866, the following further proceedings were had, to wit:

*Claim of plaintiffs allowed, and judgment for pl'ffs for* $655 89.

In the matter of the steamboat M. Burns.

Now at this day come the defendant and the claimants, Morrison & McEnnis, and Cavender & Rowse, and the court being now fully advised of and concerning their said demands, doth award
41 judgement in favor of Morrison & McEnnis for the sum of $655 89, and finds that their claim belongs to the second class of liens against said boat; and the court doth reject the claim of Cavender & Rowse, and orders that said claimants pay the costs accrued therein.

Motion for a new trial filed by Aiken & Co.

And on the fifteenth day of November, 1866, the following proceedins were had, to wit:

*Motion for new trial filed.*

In the matter of the steamboat M. Burns.

Motion for a new trial filed by Morrison & McEnnis, claimants in above matter.

And afterwards, on the 23d day of November, 1866, proceedings were had as follows, to wit:

*Motion for new trial overruled.*

In the matter of the steamboat M. Burns.

The court having heard and fully considered the motions of the claimants, Morrison & McEnnis, Cavender & Rowse, and Aiken & Co., for a new trial herein, doth order that said motions be
42 respectively overruled.

And on the 26th day of November, 1866, the following further proceedings were had herein, to wit:

*Appeal allowed to general term and agreement betw. parties.*

In the matter of the steamboat Laura.
In the matter of the steamboat Louisa.
In the matter of the steamboat Milbrey.
In the matter of the steamboat Gray Eagle.

In the matter of the steamboat North Alabama.
In the matter of the steamboat Leonora.
In the matter of the steamboat C. J. Caffrey.
In the matter of the steamboat M. Burnes.
In the matter of the steamboat Silver Wave.
In the matter of the steamboat Fanny Barker.
In the matter of the steamboat McPorter.

43 On motion of Morrison & McEnnis, claimants in the above eleven boats, by their attorney, an appeal is allowed them to the general term from the decision rendered herein. They thereupon file an agreement, which is in the words and figures following, to wit:

In the St. Louis Circuit Court, October term, 1866.

THOMAS MORRISON *et al*,
*vs.*
STEAMBOAT "LAURA."

ALSO SAME
*vs.*
TEN OTHER BOATS, being JOHNSONVILLE Packet Company boats.

JOSEPH GARTSIDE
*vs.*
Several of the BOATS of said line.

It is hereby agreed between the undersigned that bill of exceptions in said cases may be filed at any time during the month of December, 1866, and further steps for appeal taken during said month, with the same force and effect as if bills of exceptions were filed and such proceedings taken at the present term, and all objections as to time in filing said bills and taking said appeals are hereby waived.

RANKIN & HAYDEN, *P. D.*
GEO. P. STRONG, *for Pl'ff.*

St. Louis, 26th Nov'r, 1866.

44 Afterwards, to wit, on the 29th day of December, A. D., 1866, the following bill of exceptions was filed in the case of Morrison & McEnnis *vs.* The Steamboat Laura, and which, by agreement therein mentioned, is to be used in this cause, to wit:

*Bill of exceptions.—Testimony of Morrison.*

THOMAS MORRISON *et al.*
*vs.*
STEAMBOATS LEONORA and others.

Be it remembered, that on the trial of this cause plaintiffs introduced Thomas Morrison, who testified that the stores and supplies

embraced in the account filed were furnished to said boat; the prices are those usual, and are reasonable, such as the boat was accustomed to pay for these articles at the time these were furnished. These articles were furnished the boat upon the order or direction of Scott, who was the general purchasing agent for these boats. No part of these bills had been paid, except what was credited.

On cross-examination he stated that notes had been taken for part of these accounts. The accounts against all the boats run-
45 ning in the Johnsonville line had been presented for payment in December, 1865, but as the company running the boats at that time could not pay these accounts, they were settled by a note for $3,096 19-100, due sixty days from date. This was before the boats were transferred to the St. Louis, Cairo, & Johnsonville Packet Company. This note was signed by Nolan and Caffrey. This was the name of a firm doing a commission business in St. Louis several years ago, but Nolan died before this Johnsonville line of boats was started, and the surviving partner continued business under the same name. Witness is one of the plaintiffs. They had had dealings with C. J. Caffrey, after Nolan's death. While he, Caffrey, was doing business under the name of Nolan & Caffrey, and after he started this line of boats, plaintiffs furnised them stores and supplies; never knew that F. Knobel was a member of the firm of Nolan & Caffrey. Witness takes the Mo. Republican and Democrat, but had never noticed an advertisement of Knobel's being admitted into the firm of Nolan & Caffrey. Knobel had been the book-keeper
46 and cashier of that firm for several years, and generally was the one with whom plaintiffs settled their accounts; had not noticed any difference in his manner of signing notes after January 1st, 1865, from that usual before that date.

After the boats in this line had been transferred to the St. Louis, Cairo & Johnsonville Packet Company, which was organized in December, 1865, or January, 1866, plaintiffs took another note for $1,872 74-100 in settlement of accounts against these boats to that amount. This was the Packet Company's note to plaintiffs' order. Neither of these notes were taken in payment of the accounts, but only to close and settle them, because plaintiffs could use the notes, and did use them by endorsing them and getting them discounted at the National Bank where plaintiffs to their business. These notes were not paid at maturity by the makers, but were taken up by plaintiffs as endorsers. They matured within six months of the time of furnishing these supplies. These boats run from St. Louis, in the State of Missouri to Johnsonville, in the State of Ten-
47 nessee, and these stores and supplies were furnished to them at St. Louis, Mo. These notes are now brought into court to be cancelled. They are now, and have been ever since their muturity, of the plaintiffs.

Knobel was accustomed to sign the firm name of Nolan & Caffrey, without saying by Knoble, or using any addition agency. The $3,096 19 note was renewed twice. The original was signed by Nolan & Caffrey just as this is. The original was given before the

Packet Company was organized. The other note was originally given by the company; it was never renewed. I got the money on these notes when I endorsed them, and discounted them in the bank. The receipted bills embraced in these notes are a part of the account sued on; they are receipted "Rec'd pay't. Morrison & Co." This is our firm signature. When we received the notes, we would thus receipt the bills and give them up. We got three notes on these accounts. The $2,000 00 has been paid, and is credited on the accounts sued on. We did not consider these accounts paid by the notes. We refused to extend the notes beyond the time
48 the lien would run. The unpaid notes were protested and then taken up by plaintiffs at maturity, and it is in this way that we have them now.

*Testimony of Scott.*

Scott, being sworn for plaintiffs, testified that he was the general purchasing agent for these boats; that it was his business to purchase the stores and supplies for each of these boats as they needed them. A notice was published to this effect by the proprietors of the boats, and also that bills made by any other person in St. Lonis, would not be recognized. He purchased the articles mentioned in plaintiffs' accounts, filed for the boats to which they are charged. The accounts he believed to be correct. All bills had to be presented to him and approved before they would be paid. This was the mode of doing business.

On cross-examination, he stated that he was not employed on either of the boats, but was employed in St. Louis to see what each boat required when she came into port, and to purchase for her the necessary supplies. I never served on any of the boats, but was employed as an agent on shore to make these purchases; was employed by the company owning the boat.

49 *Testimony of Knoble.*

F. Knoble, being sworn for defendants, testified as follows: That he was admitted to the firm of Nolan & Caffrey about January 1, 1865, and very soon after that a notice to that effect was published in the Mo. Republican. and, witness thinks, in the Democrat; am certain I saw it in the Republican. I had no interest in these boats, and never owned any stock in the company. Before the organization of the packet company (the corporation, I mean,) these boats were owned by C. J. Caffrey & Co., a firm composed of C. J. Caffrey and Wm. Truesdail. C. J. Caffrey alone composed the firm of Nolan & Caffrey from the time Nolan died until I was admitted to the firm in January, 1865. After the packet company was organized I was elected treasurer of it; I made all the settlements with Morrison & Co. These bills receipted are all embraced in the accouuts sued on. When the $3,069 19 note was first given, Nolan & Caffrey's credit was good, and it continued good for several

months thereafter; it was good, I think, when this note was renewed. At one of these renewals we wanted to change the note and substitute the St. Louis C. & J. Packet Company's note,
50 but Morrison would not take it; he said the bank preferred to have the note made in the same way the first was made; that is, Nolan & Caffrey's note. At one time we owed a small bill of six or seven hundred dollars, and Morrison objected to taking the Packet company's note for it, and we gave him Nolan & Caffrey's note. The accounts settled by that note are not embraced in these suits. It was at Morrison's request that Nolan & Caffrey signed the $3,096 19 note when it was renewed; the notes were in payment of the bills; nothing was said about it, but I so regarded it.

On cross-examination, witness stated that he put no capital into the firm of Nolan & Caffrey, but his services were accepted as his share of the capital of the concern; that when these notes were given bills were presented against each boat, and the aggregate amount of these bills made up the amount of the notes. The bills were receipted by plaintiffs by writing the words "Rec'd pay't. Thos. Morrison & Co." When the first note was given the corporation had not been organized. Nolan & Caffrey were the financial agents of the boats while owned by C. J. Caffrey & Co., and
51 received all the earnings of the boats and settled the bills. They kept the funds in the name of Nolan & Caffrey in the bank, and paid the boats' bills by giving their checks on the bank when they had the money to pay, and when they had no money they settled the bills by giving their notes. This was the way the plaintiffs' bills were settled. Plaintiffs, of course, wanted the money for their bills, but as we had no money to pay them we gave them the $3,096 19 note. We expected to pay the note out of the earnings of the boats which would come in our hands. Before I became a member of the firm of Nolan & Caffrey I had a power-of-attorney to sign their names, and also signed their name by me as agent. After January 1, 1865, I signed their name as a member of the firm usually does without any addition. I signed it thus in my dealings with plaintiffs after that date. The statements which are now shown to me show the items which entered into the $3,096 19 note, and the $1,872 74 note. The statements were then read in evidence, and are in the words and figures following, to wit:

52 *Statement.*

Thos. Morrison, old ac., note given Dec. 28th, 1865.

| | |
|---|---|
| Milbrey | $165 70 |
| F. Barker | 316 94 |
| Louisa | 409 10 |
| Laura | 236 07 |
| M. Burns | 377 81 |
| Silver Wave | 183 28 |
| Silver Wave | 74 05 |
| Silver Wave | 257 42 |

| | |
|---|---|
| Caffrey | 281 72 |
| Caffrey | 280 90 |
| Leonora | 334 92 |
| Nolan & Caffrey merchandise, bill for durus sinuto Nashville | 177 48 |
| Nolan & Caffrey's note unpaid, Dec. 28 | $3,096 19 |
| | $220 81 |
| | 27 14 |
| | 45 40 |
| | 42 36 |
| | 227 35 |
| | 85 41 |
| Note of Co., Dec. 28, 1865 | $648 47 |

Morrison refused to take without N. & C. endorsement.

The amount of plaintiffs claim against each boat, and the amount of each claim embraced in said notes, is shown in an agreement filed in one of plaintiffs' said cases, and such agreement is, by consent, to be used in making up the final judgement in all of said causes,
53 there being eleven boats, against each of which plaintiffs have suits, to wit: the Laura, Mc. C. Porter, North Alabama, Louisa M. Burns, C. J. Caffrey, Leonora, Silver Wave, Grey Eagle, Milbrey, and the Fanny Barker.

*Testimony of C. D. Jones.*

C. D. Jones, being sworn, says: I am cashier of the Second Nationa Bank where plaintiffs kept their deposits, and do their business. Both these notes were discounted at our bank. They were discounted by Morrison & Co., partly on their endorsement. It was partly on the credit of the plaintiffs, though of course we considered the names of the makers as adding something to the value of the notes; the whole thing went in together; we would have discounted most any kind of notes if plaintiffs endorsed it. We discounted considerable of this company's papers. The money was placed to the credit of T. Morrison & Co. on both these notes.

This was all the testimony in the case. The court, on motion of defendants, after the testimony was all in as above stated, gave the following instructions, after modifying them as therein stated:

54 *Instructions for Defendant.*

Morrison case.—By def't.

If the court, as a jury, believes, from the evidence, that from time to time, while the account now sued on was accruing plaintiffs received notes covering such portions of such accounts, which notes were signed or endorsed and given according to plaintiffs directions or request, and were received by the plaintiffs with a special view to negotiating and raising money on them, and such notes were nego-

tiated, and money raised on them or some of them, then the plaintiffs thereby lost their lien, and cannot recover, although the notes so given are produced and offered for cancellation.

Refused, but given with the following words interpolated between "lien" and "and," to wit, "as to so much of his account as is included in such negotiated notes.

REBER.

Morrison case.—By defendant.

If the court, as a jury, believes that the plaintiffs refused to take the notes of the Johnsonville Packet Company, and specified other parties whom they wished on the paper, and such party or
55 parties were given on paper covering this account or a portion of it, and on the faith of the name or names of such new parties, such notes were accepted by plaintiffs, and bills for such portion of the account signed "rec'd pay't," by plaintiffs, and delivered to the debtor; and further believes such notes were afterwards negotiated and money raised on them or some of them, then plaintiffs thereby lost or have waived their lien, and cannot recover.

Refused, but given with the following words interpolated between "lien" and "and," to wit: "as to so much of this account as is included in such negotiated notes."

REBER.

The cause then being then submitted to the court, so much of the plaintiffs' claims as was included in said notes was rejected, and the remainder allowed; to which decision of the court, in giving said instructions, and in rejecting the portion of said claims embraced in said notes, plaintiffs did then and there except.

Within due time after the rendering of final judgment in said cause, plaintiffs filed the following motion for a new trial:

56 *Motion for new trial.*

THOMAS MORRISON *et al.*
*vs.*
STEAMBOAT LAURA.

Plaintiffs moved the court to set aside the judgment in this case and grant a new trial.

1st. Because the court erred in giving the instructions asked by defendant, and in refusing those asked by plaintiffs.

2d. Because the court erred in rejecting or disallowing so much of of plaintiffs' claims as was embraced in the notes read in evidence; and in not allowing and rendering judgment for the full amount of plaintiffs' claim.

3d. Because the court erred in admitting illegal and improper evidence offered by defendant, and in excluding legal and competent evidence offered by plaintiff.

GEO. P. STRONG,
*Att'y for Pl'ff.*

Which motion the court overruled, and plaintiffs then and there excepted.

It was agreed between the parties hereto that this bill of exceptions may be filed in either of said causes, and may be used in taking to the general term and to the Supreme Court either of said
57 causes with the same effect as though filed in each case, and that the judgement in each case shall be entered in accordance with the principles laid down in the cause in which the appeal may be taken.

And that the matters herein contained may be made part of the record, plaintiffs pray that this bill of exceptions may be signed and sealed, which was done.

[SEAL.] SAM'L REBER,
*Judge, &c.*

And afterwards, to wit, on the 24th day of May, A. D. 1867, at the general term of said court, the following proceedings were had in said cause, to wit:

*Judg't of special T. reversed, and cause remanded at gen'l T.*

THOMAS MORRISON AND THOMAS F. McENNIS
*v.*
STEAMBOAT LOUISA.

THOMAS MORRISON AND THOMAS F. McENNIS
*v.*
STEAMBOAT LEONORA.

Now come the parties in the cases wherein Thomas Morrison and Thomas F. McEnnis are plaintiffs, and the steamboats G. McC. Porter, Fanny Barker, North Alabama, Silver Wave, Grey Eagle, M. Burns, Milbrey, C. J. Caffrey, Louisa and Leonora, are defendants, and file a stipulation, whereby it is ordered by the court that
58 the judgements rendered in these causes by the Circuit Court of St. Louis county, at special term, be in all things reversed, and that these causes be remanded back to the Circuit Court of St. Louis county, at special term, for a new trial.

Whereupon, on the 29th day of May, 1867, the following proceeding were had at said Circuit Court, at special term, to wit:

*Amended answer filed by leave of Ct., and reply thereto.—Judgment for $1,413 17 for pl'ffs.*

In the matter of the steamboat M. Burns.

Now, at this day, comes the defendant, by its attorney, and by leave of court files an amended answer to the claim of Morrison & McEnnis herein; and thereupon said claimants come and file a reply thereto, and submit to the court their demand against said boat; and

the said claim being fully proven, and the validity thereof established, the court doth award judgement in favor of said claimants for the sum of fourteen hundred and thirteen 17-100 dollars, and finds that their demand belongs to the second class of liens
59 against said boat; which amended answer is in the words and figures following, to wit:

In the St. Louis Circuit Court.

*Amended answer.*

THOMAS MORRISON *et al.*
*vs.*
STEAMBOAT M. BURNES, deft.

ST. LOUIS COUNTY, *ss:*

Now comes said defendant, the steamboat M. Burnes, by Adolphe Heinecke, owner of said boat, and by leave of court files his amended answer to the plaintiff's petition, and admits that certain supplies were furnished to this defendant; but whether they were furnished at the date named, or in the quantities charged in said petition and account, this defendant does not know, nor has it any knowledge or information sufficient to form a belief; and whether said amount is due, as charged, and whether said prices were correct this defendant does not know, nor has he any knowledge or information sufficient to form a belief. This defendant says that said alleged supplies were not furnished, nor were any of them, while the defendant was owned by its present owner; but that since said supplies were furnished, said boat had been sold, and is now owned by a different party
60 from its then owner. And for a further defence, the defendant, the steamboat M. Burnes, states that at the time said alleged supplies were furnished, and the alleged cause of action of the plaintiffs accrued, and at the time this defendant was seized in this suit, this defendant was a steamboat owned by parties, most of whom resided in the city of St. Louis, and was enrolled at the custom-house in said city, and was engaged in commerce upon the Mississippi, Ohio, and Tennessee rivers, and in carrying freight and passengers between the ports of St. Louis, in the State of Missouri, Cairo, in the State of Illinois, and Johnsonville, in the State of Tennessee, and other parts in the different States of the Union; that said alleged supplies were furnished at said port of St. Louis as necessary supplies for this defendant as a steamboat, while engaged in such navigation, and were furnished on the faith of the lien as given by the statute, as well as on the personal credit of the owner; that the present suit was brought under chapter 20th of the Revised Statutes of Missouri, of 1855, entitled "An act concerning boats and vessels," and that under the said act this defendant, being the
61 only defendant in the case, was seized by warrant issued against it, and was subsequently ordered by this court to be sold, and was sold under said act to answer the demands in the pres-

sent and other suits under said act, and the proceeds of the sale paid in, to await the order of this court distributing the fund proceeding from said sale among the various creditors proving their claims under said act; and therefore this defendant says this court ought not to have or take further cognizance of this action as matter, because it says that the said supposed cause of action is out of the jurisdiction of this court, and that this court has not, nor has it ever had, any jurisdiction of this action or of the present suit, as instituted by the plaintiff, and as now presented by him before the court, because, under the Constitution, and under the laws of the United States, and particularly the judiciary act of 1789, the jurisdiction of all such causes of action, and all such contracts, is exclusive in the district courts of the United States.

And having fully answered, this defendant asks to go hence with his costs.

RANKIN & HAYDEN,
*Atty's for Def't.*

62 Affidavit to answer is hereby waived.
St. Louis, May 29, 1867.

GEO. P. STRONG,
*Att'y of Pl'ffs.*

And which reply to the foregoing amended answer, filed by plaintiffs, is in the words and figures following, to wit:

In the St. Louis Circuit Court.

*Reply to amended answer.*

THOMAS MORRISON *et al.*
*vs.*
STEAMBOAT M. BURNS.

ST. LOUIS COUNTY, *ss:*

Now come the plaintiffs, and for reply to the new matter, admit that the allegations of fact in said answer averred, after the words "and for a further defence," are true; but these plaintiffs deny that by reason of any matter alleged in said answer this court has not, or had not, jurisdiction of the case; and they aver that the court had full jurisdiction of the contract cause of action and suit; and they ask for judgement as in the complaint.

GEO. P. STRONG,
*Att'y for Pl'ffs.*

And afterwards, on the 8th day of June, 1867, the following further proceedings were had, to wit:

63 *Motion for new trial overruled.*

In the matter of the steamboat M. Burns.

The court having heard and fully considered the defendants motion for a new trial of the claims of Morrison & McEnnis and Aiken & Co. herein, doth order that said motions be severally overruled.

And on the 15th day of June, A. D. 1867, the following proceedings were had, to wit:

*Bill of ex. filed, and appeal allowed to gen'l. term.*

In the matter of the steamboat M. Burns.

The defendants comes by its attorney and files a bill of exceptions in the matter of the claim of Morrison & McEnnis, and on its motion an appeal is allowed it to the general term from the decision herein rendered.

Which bill of exceptions is in the words and figures following, to wit:

St. Louis Circuit Court.

*Bill of exceptions.*

THOMAS MORRISON *et al.*
*vs.*
THE STEAMBOAT M. BURNS.

ST. LOUIS CO., *ss*:

64 Be it remembered, that upon the amended answer and the reply in this case being filed, as shown by the record, the case came on for trial before the court, a jury being waived, and the plaintiffs proved that the supplies were furnished to the defendant, the steamboat M. Burnes, as alleged in his petition and charged in his account, and upon the order of the duly authorized agent of the owners of the boat, at the dates alleged; that the prices were reasonable, and the balance claimed unpaid.

The evidence showed that the supplies were furnished and delivered to the boat at St. Louis, where the boat was enrolled, and where most of the owners resided; that the boat was employed in the passenger and freight trade between St. Louis, in Missouri, Cario in Illinois, Johnsonville in the State of Tennessee, and other ports in different states, and navigating the Ohio, Mississippi, and Tennessee rivers, while this demand was accruing and when the boat was seized in this suit; that the plaintiff had charged these goods on his books to the boat itself, and that he looked to the boat as well as its owners for payment.

The defendant offered and read in evidence the following papers and records:

65 1st. The return on the warrant of arrest in the present case, which is as follows:

(See page 24 of this record.)

2d. The application to the court for the order of the sale of the vessel, which is as follows:

(See p. 25 of this record.)

3d. The order of the court for the sale of the boat, which is as follows:

(See p. 26 of this record.)

4th. The advertisement of the sheriff of the sale of the boat, which is as follows:

(See p. 28 of this record.)

5th. The return of the sheriff upon the order of sale, which is as follows:

(See p. 27 of this record.)

6th. The order of the court appointing a time for creditors to file their demands and to appear and prove them up, which is as follows:

(See p. 29 of this record.)

7th. The notice to creditors to appear as above, as published in the newspapers, which is as follows:

(See p. 32 and 34 of this record.)

8th. The record entry showing that the various parties appeared before the court and had their demands heard and adjudicated, which is as follows:

(See p. 36 of this record.)

66 It was further admitted in evidence that such of the demands as were allowed by the court were to be paid out of the fund proceeding from the sale of the steamboat M. Burns, according to the usual course of proceeding in cases where boats are sold and claims allowed under the boat and vessel act.

This was all the evidence in the case. The defendant thereupon asked the court to declare the law to be as contained in the following instruction, which the court refused to do; and the court refused to give the instruction, which is as follows:

*Defendants instruction refused.*

The defendant asks the court to declare the law to be—

That this court has no jurisdiction of the present suit, and that under the Constitution and laws of the United States, and particularly the 9th section of the judiciary act of 1789, the jurisdiction of causes of action, such as that here sued on, is vested exclusively in the courts of the United States.

To which refusal of the court to so declare the law and to give said instruction defendant at the time duly excepted.

67 The court gave judgement for the plaintiffs in the amount of their demands as claimed with interest, and allowed their demand as a lien in the second class against defendant, to which action of the court the defendant duly excepted.

Afterwards, and within four days, the defendant filed his motion for a new trial, which was in the words and figures following, to wit:

In the St. Louis Circuit Court.—April term, 1867.

*Motion for a new trial.*

THOMAS MORRISON *et al.*
*vs.*
STEAMBOAT M. BURNES.

Now comes the defendant, through its owner, Adolphe Heinecke, by

its counsel, and moves the court to set aside the judgement and grant a new trial in this case, on the grounds—

1st. That the court erred in refusing the instruction asked by the defendant.

2d. That the court erred in declaring the law of the case.

3d. That the court erred in refusing to dismiss the case for want of jurisdiction.

4th. That the court erred in giving judgment for the plaintiffs.

5th. That the judgment is erroneous on its face, as rendered by a court having no jurisdiction to give or render such judgment.

68 RANKIN & HAYDEN,
*Att'ys for Deft.*

Which motion was in due time overruled; to which action of the court the defendant duly accepted. Afterwards, and on a report being duly made and filed in court, showing the condition of the fund proceeding from the sale of the steamer M. Burns, the court ordered that the sheriff pay the amount of the plaintiff's judgement to the plaintiffs out of the fund in the sheriff's hands proceeding from the sale of the steamboat M. Burns; to which order of the court the defendant at the time duly excepted, and now presents this its bill of exceptions, which it prays may be signed and sealed by the court and made part of the record; which is accordingly done.

SAM'L. REBER.

All right.

GEO. P. STRONG.

And afterwards, on the 21st day of June, 1867, the following proceedings were had at the general term of said court, to wit;

69 *Judgment and final order of special term, affirmed at gen'l term.*

THOMAS MORRISON AND THOMAS F. McENNIS
*vs.*
ST. B'T M. BURNES.

Now come the parties, by their respective attorneys, and the court, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment and final order rendered herein by the court at special term be in all things affirmed, and stand in full force and effect, and that the defendant pay the costs of this proceeding.

And on the 25th day of June, 1867, the following further proceedings were had at said general term, to wit :

*Bill of ex. and affidavit for appeal filed.—Appeal allowed to Supreme Court.—Appeal bond filed and app'd.*

THOMAS MORRISON AND THOMAS F. McENNIS.
*vs.*
ST. B'T M. BURNES.

Now comes the defendant, by attorney, and files a bill of exceptions herein, and also an affidavit for an appeal, and on his motion

an appeal is allowed it to the Supreme Court from the judgement herein rendered. It thereupon files an appeal bond, which is approved; which bill of exceptions is in the words and figures
70 following, to wit:

In the St. Louis Circuit Court, St. Louis county, June term, 1867.

*Bill of exceptions at gen'l term.*

THOMAS MORRISON *et al.*
*vs.*
STEAMBOAT M. BURNES, def't and app'l't.

Be it remembered, that on the trial of this cause at general term, the case was heard on appeal from the judgement and order of this court at special term, in court-room No. 2, on the case presented the bill of exceptions sent up from said special term; which bill of exceptions was in the words and figures following, to wit:

(See p. 63 of this record.)

And the court at general term, having duly considered the case and questions presented by the said bill of exceptions, ordered and adjudged that the judgment and order of the court at special term be affirmed in all things; to which judgment and decision the appellant duly excepted at the time, and now presents this, its bill of exceptions, which it prays may be signed and sealed by the court and made part of the record herein, which is accordingly done.

SAM'L REBER, *P. J., P. T.*

71 And which affidavit for appeal and appeal bond are respectively in the words and figures following, to wit:

In the St. Louis Circuit Court.

*Affidavit for appeal.*

THOS. MORRISON *et al.*, pl'ffs,
*vs.*
STEAMBOAT M. BURNES, def't.

ST. LOUIS COUNTY, *ss:*

Adolph Heinecke, owner of said steamboat M. Burnes, and for and on the part of said boat, being duly sworn, on his oath, states that the appeal in this case is not made for vexation or delay, but because the affiant believes appellant is aggrieved by the judgment or decision of the court herein.

ADOLPHE HEINECKE.

Sworn to and subscribed before me June 25, 1867.

F. A. H. SCHNEIDER, *Cl'k.*

*Appeal bond.*

Know all men by these presents that we, Adolphe Heinecke, as principal, and Jacob Tamm, George Gehrke, as sureties, are held and firmly bound unto Thomas Morrison and Thomas F. McEnnis in the sum of two thousand and nine hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by
72 these presents. Sealed with our seals and dated at St. Louis this twenty-fifth day of June, 1867.

The condition of the above obligation is such, that whereas the steamboat M. Burnes, by Adolphe Heinecke, owner of said boat, has appealed from the judgement rendered against her and in favor of Thomas Morrison and Thomas McEnnis, in the St. Louis Circuit Court, for the sum of fourteen hundred and thirteen dollars and seventeen cents, together with costs: Now, if the said appellant will prosecute her appeal with due diligence to a decision in the Supreme Court, and shall perform such judgement as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Circuit Court to give, and if the judgement, or any part thereof, be affirmed, will comply with and perform the same so far as it may be affirmed, and pay all damages and costs which may be awarded against her by the Supreme Court, then this obligation shall be void; otherwise it shall remain in full force and effect.

[SEAL.] ADOLPH HEINECKE.
[SEAL.] JACOB TAMM.
[SEAL.] GEORGE GHERKE.

Approved in open court June 25, 1827.

F. A. H. SCHNEIDER, *Cl'k.*

73 STATE OF MISSOURI, *County of St. Louis, ss:*

I, Frank A. H. Schnieder, clerk of the Circuit Court within and for the county of St. Louis, hereby certify the foregoing to be a true and complete transcript of the files and records in the case of Thomas Morrison and Thomas F. McEnnis *vs.* The Steamboat M. Burns, as fully as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 5th day of October, A. D. 1867.

F. A. H. SCHNEIDER, *Cl'k.*

And afterwards, to wit, at the October term, A. D. 1867, of said Supreme Court, the following further proceedings were had in said cause, to wit:

*Statement and brief of appellant filed.*

WEDNESDAY, *November* 6, 1867.

THOMAS MORRISON *et al.*, respondents,
*vs.*
STEAMBOAT M. BURNES, appellant.

And afterwards, at the same term of said Supreme Court, the following proceedings were had in this cause, to wit:

74 *Submission.*

FRIDAY, *November* 8, 1867.

THOMAS MORRISON *et al.*, respondents,
*vs.*
STEAMBOAT M. BURNES, appellant.

Now again come the parties aforesaid, by their respective attorneys, and submit this cause to the court upon their briefs filed herein.
Brief of respondents filed.

And afterwards, at the same term of said Supreme Court, the following judgment was rendered in this cause, to wit:

*Judg't of Circuit Court affirmed in Supreme Court.*

MONDAY, *November* 11, 1867.

THOMAS MORRISON AND THOMAS F. MCENNIS, respondents,
*vs.*
STEAMBOAT M. BURNES, appellant.
} Appeal from St. Louis Circuit Court.

Now again come the parties aforesaid, by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis Circuit Court be in all things affirmed and stand in full force and effect, and that the said respondent
75 recover of the said appellant their costs and charges herein expended.
Opinion filed.

And afterwards, at the same term of said Supreme Court, to wit, on the 18th day of November, A. D. 1867, the appellant appeared in court by attorney and filed a bond in this cause, which bond is in the words and figures following, to wit:

*Bond.*

Know all men by these presents that we, Adolphe Heinecke, Chas. H. Tiechmann, and Jacob Tamm, are held and firmly bound unto Thomas Morrison and Thomas F. McEnnis, for their heirs, in the full and just sum of twenty-five hundred dollars, to be paid to the said Thomas Morrison and Thomas F. McEnnis, their heirs, executors,

administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas lately, at the October term, 1867, of the Supreme Court of the State of Missouri, in a suit depending in said court be-
76 tween the said Thomas Morrison and Thomas F. McEnnis, appellees, and the steamboat "M. Burnes," (Adolphe Heinecke, owner,) appellant, judgment was rendered against the said steamboat "M. Burnes," &c., appellant; and the said appellant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Thomas Morrison and Thomas F. McEnnis, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday in December next:

Now, the condition of the above obligation is such, that if the said appellant shall prosecute said writ to effect, and answer all damages and costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] ADOLPH HEINECKE.
[SEAL.] CHAS. H. TEICHMANN.
[SEAL.] JACOB TAMM.

Sealed and delivered in presence of—
JNO. H. RANKIN.

Approved by—

DAVID WAGNER,
*Presiding Judge Sup. C't Mo.*

77 STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify the above and foregoing to be a full, true, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remains of record and on file in my office.

Witness my hand, with the seal of said court hereto affixed, at office, in the city of St. Louis, this twelfth day of December, A. D. 1867.

[SEAL.] O. T. FISHBACK, *Clerk*,
Per E. P. McCARTY, *D'p.*

# In the Supreme Court of the United States.

NOS. 234 & 233. DECEMBER TERM, 1869.

STEAMBOAT M. BURNES, HER TACKLE, &c.,
Plaintiff in Error,

*vs.*

THOS. MORRISON and THOS. F. McENNIS.

SAME,

*vs.*

JAMES F. REYNOLDS and JAMES AIKEN.

In error to the Supreme Court of Missouri.

## EXPLANATORY STATEMENT.

*In regard to the Morrison Case, No.* 234—

The record as it stands is somewhat confused, and has much matter in it which had nothing to do with the questions now before the Supreme Court. This arises partly from the fact that eight or ten boats were proceeded against at the same time, and that the clerk, to save multiplicity of entries, entered proceedings in a lumping manner, as "In the matter of steamboats C. J. Caffrey, M. Burnes," &c., &c., so that to copy one entry is often to copy all. But what has occasioned more confusion is, that some cases went up to the supreme court of our State on other questions than the present ones, and were there reversed and sent back; and that the clerks, in copying the record, have got in the old bill of exceptions. (See pp. 24, 25, 26, 27, 28, 29, and 30, which presents the questions on the first appeal, and not the questions now raised.) This old bill of exceptions has nothing whatever to do with the matter. The bill of excep-

tions which shows the present case is on page 33. The pleadings which show the present case are, 1st, The petition on page 3. (The accounts copied out have, of course, no bearing.) 2d, The answer on page 31. The first answer on page 18 is now out of the case, as the amended answer on page 31 supersedes the old answer. It was on the amended answer that the case was tried on the last trial, on which it has now come up to the Supreme Court. 3d, The reply on page 32.

It may appear strange that there were so many warrants, returns of sheriff, orders of sale, notices, publications, &c., but these were purposely put in, and were, as the bill of exceptions shows, (pp. 33 and 34,) offered in evidence on the last trial, with the view of showing the whole proceeding to have been *in fact an admiralty proceeding throughout;* as the "boat law" of Missouri directly follows the course of proceedings in admiralty.

*In regard to the Aiken Case, No.* 233—

It is like the Morrison case, except that in the Aiken case there are no pleadings. Under the statute, creditors coming in *after the sale* need file no pleading, but only their account, which is considered as denied, and tried as if denied by pleadings. Morrison's case was the first case brought, and so there are pleadings. In Aiken's case the questions are raised by instructions, as shown in the bill of exceptions on pages 12 to 15.

BRIEF ON THE PART OF THE PLAINTIFF IN ERROR.

We contend that the courts of the State of Missouri have no jurisdiction of this case, and that the statute of Missouri, commonly called the boat and vessel act, (being chapter 20 of the revised statutes of that State for 1855, vol. 1, p. 302,) under which jurisdiction is claimed, is unconstitutional, so far as it gives such jurisdiction, as being repugnant to the second section of the third article of the constitution of the United States and to the ninth section of the judiciary act.

The statute of Missouri, under which the proceedings in

the present case took place, is neither more nor less than a codified though incomplete system of admiralty jurisprudence. The plan and procedure of the admiralty is not merely imitated, but literally copied. The act, *in terms*, applies to *every vessel*, whether owned in a foreign country, in another State, or in Missouri. The creditors who are cited to come in are, *in terms*, all creditors, having liens, wherever residing. The causes of action, as expressed in the statute, are almost purely maritime. A classification of liens is made, and some are preferred, on the principles of the admiralty. Proceedings are commenced by the filing of a complaint, which is a libel in everything but name, against the vessel; the owner or any personal defendant being unnoticed in the proceeding. The plaintiff verifies his complaint by affidavit, and gives his stipulation, and the warrant of seizure issues against the boat. The *vessel* is, throughout the whole proceeding, treated as *the defendant*, and it is entirely immaterial, so far as the regularity of the proceedings are concerned, whether any person appears on the part of the boat or not. If any person does appear, he appears merely as a claimant appears in admiralty, and the proceedings are still against the *res*. If within five days after seizure the vessel is not released on bond, she is sold, as of course, and the fund is thenceforth held in court in her place. The court then appoints a time for all lien creditors to appear and exhibit their demands, and gives notice to this effect by publication. The creditors then appear, and the court proceeds to pronounce upon their demands, to classify them according to their rank, and to distribute the fund among the creditors, applying the money to the entire payment of a prior class before any in the subsequent classes are paid. All these proceedings took place, as is shown by the record in the present cases.

This statute, which was enacted long before the decision in the *Genesee Chief Case* had brought the rivers of the west within the scope of the admiralty, has only by degrees grown to its present completeness. It was, up to a recent time, regarded by the supreme court of Missouri as conferring *admiralty jurisdiction*, and the efforts of each legislature have

been exerted to make it more and more a body of *admiralty law*. There have been repeated decisions of the supreme court of Missouri construing it; and whenever there have been deficiencies in the statute, or doubt as to its meaning, the admiralty law has been avowedly the source to which that court has resorted. So far has that court gone toward making it a body of admiralty law, that it held at one time that a sale under the law divested a lien given by a similar law in another State, and had, in fact, the full force and effect of an admiralty sale. (Finney *et al. vs.* Steamboat Fayette, 10 Mo., 612; Steamer Sea Bird *vs.* Buhler, 12 Mo., 570) In the latter case, the supreme court pronounced the proceeding under the act "strictly a proceeding *in rem*," and said, in reference to it: "It is evident that judicial sales in maritime proceedings are essentially different in their results from an ordinary sale under an execution upon a judgment at law. The maritime proceedings alluded to were strictly *in rem*, and a sale of the vessel was made for the benefit of all whom it concerned. *This is the case under our statute as it now stands.* There are obvious reasons which require such sales should convey a clear title, freed from all prior incumbrances, and which have no applicability to sales under executions at law, whether the proceedings upon which the judgment is founded be *in rem* or *in personam*, or both *in rem* and *in personam.*"

After the decisions just cited were rendered, the question came before the district court of the United States for Missouri, (Ashbrook *vs.* The Golden Gate, Newb., 296,) whether a sale under the Missouri act divested maritime liens existing by the laws of the United States. This led to a fuller examination of the statute than it had before received. The result of the able and elaborate decision of Judge Wells clearly was, even at that date, though it was not announced in terms, that if the proceeding under the Missouri boat and vessel act was a proceeding *in rem*, it was unconstitutional and void. It was not, however, necessary for the purposes of the case before him that he should decide anything further than that a sale under the Missouri act could not divest maritime liens. It may be remarked, in passing, that in that

case the question whether the remedy given by the Missouri act could in any sense be considered within the saving clause of the judiciary act, reserving the *common law remedy*, is carefully examined and negatived.

Though this decision of Judge Wells pointed out to the supreme court of Missouri the incongruity of its opinions as to the effect of a sale under the act, it did not induce it to abate its pretensions to admiralty jurisdiction; for in the case of Yoxe *vs.* The Steamer C. Bealer, (26 Mo., 427,) decided some seven years after the Genesee Chief Case, the supreme court of Missouri held, that where a collision between two steamboats occurred out of the waters of the State of Missouri, and where the vessel proceeded against under the Missouri act was owned and enrolled at Cincinnati, the courts of Missouri had, nevertheless, jurisdiction under the act. The point was expressly made, that the jurisdiction was in the Federal courts; but the court said: "It is very clear that if the non-residence of one or more owners of a steamboat divests the jurisdiction of our courts in such proceedings, the statute is an entire failure. The purpose of the law is defeated in the very cases where its provisions are most needed. The main object of the law is undoubtedly to give redress against the boat, without requiring the party aggrieved to look up the owners. Probably a large proportion of the boats which navigate the waters within this State and upon her borders are, either in whole or part, owned by citizens of other States; and to give a construction to our statute which would oust the jurisdiction of the court upon the discovery of the fact that there was a non-resident owner, would virtually and substantially annul the law. But we are not apprized of any provision in the Federal Constitution or any principle of inter-State comity which requires such a construction to be given to the law." In Wood *vs.* The Steamboat Fleetwood, (27 Mo., 159,) the question arose upon a contract of affreightment for the transportation of goods from Pittsburg to St. Louis, the defendant (boat) being owned and enrolled at Pittsburg. The court held it had jurisdiction under the act, and affirmed the judgment. All these cases,

and others which might be cited, go to show that the statu has been regarded and administered by the supreme court of Missouri as a body of admiralty law. The only thing apparently which prevented its becoming completely such, was the fact that other tribunals, State and national, refused to recognize sales made under the act as admiralty sales, and thus imposed a practical and insuperable obstacle to its full use of the process *in rem*.

It was under this statute that the present suit was brought by material-men residing at St. Louis, and furnishing supplies there, against the M. Burnes, a steamboat enrolled at St. Louis, partly owned there, and engaged in commerce between ports in Missouri, Illinois, Tennessee, and other States.

We contend that this contract, in its nature and subject-matter, is a maritime contract, and one that is, as such, cognizable in courts of admiralty. It is a contract which relates to the supply of a vessel, *as a vessel*. The pleadings and evidence show that the vessel was enrolled, had once changed owners, and was engaged in extended maritime occupation when these supplies were furnished; that the supplies were furnished as supplies necessary for her navigation as a steamboat carrying passengers and goods between distant ports, and that the ship-chandlers or boat-store men, who furnished them, looked to the security of the boat as well as to the personal credit of the owners. Such contracts have always been held to be maritime contracts.

Between such contracts as the present and contracts which are in their nature local contracts, and therefore appropriate to the local tribunals, this court has always made a distinction. Contracts for building a boat, or equipping her with materials for her construction, this court has pronounced to be "purely local, and governed by the State laws, and to be enforced by their own tribunals." (People's Ferry Co. *vs.* Beers, 20 Howard, 401; Morewood *vs.* Enequist, 23 Howard, 491; Roach *vs.* Chapman, 24 Howard, 129.) But such language has never been used by this court as to contracts like the present. In the General Smith Case, this court said: "No doubt is entertained by this court that the admiralty right-

fully possesses *a general jurisdiction in cases of material-men;* and if this had been a suit *in personam*, there would not have been any hesitation in sustaining the jurisdiction of the district court." The distinction is made in this early opinion between contracts of which admiralty has cognizance, but to which she lends only the process *in personam*, and those to which she lends the process *in rem*. The test is declared to be, whether the vessel is a *foreign* vessel; or, if a *domestic* one, whether the local law gives a lien. But this is clearly shown to be the test of *awarding the mere process or proceeding in rem*, not the test of the jurisdiction of the admiralty over the subject-matter. Indeed, as the contract, *qua* contract, must be precisely similar, whether the ship is *foreign* or *domestic*, whether the local law affords a *lien* or *not*, how can it be said that in one case the cause of action is maritime, in the other not?

In Peyroux *vs.* Howard, (7 Peters, 324,) where the contract was for materials furnished and work performed upon a vessel in her home port, this court held, that the contract was "a maritime contract;" and then goes on to remark, "and if the service was to be performed in a place within the jurisdiction of the admiralty, and the lien given by the local law of the State of Louisiana, it will bring the case within the jurisdiction of the court." It may be well here to notice an objection which has been made to this and other cases in which this court has enforced State liens, and to the old 12th rule in admiralty and the practice under it. It has been urged that in these cases, and by its adoption of the 12th rule as it formerly stood, this court has recognized and even enforced the "boat laws" of the States, and, among others, the Missouri act, now claimed to be unconstitutional. But the position taken is not that the "boat laws" are unconstitutional so far as they give a *lien;* but that they are unconstitutional so far as in cases of admiralty cognizance they authorize the State courts to enforce those liens by proceedings *in rem*. This court, in Peyroux *vs.* Howard, and other cases, as well as by its adoption of the former 12th rule, recognized that the State law might give a lien, and enforced that lien by its own process *in rem;*

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but it nowhere recognized the authority of a *State court* to enforce liens in cases of maritime cognizance by the proceeding *in rem*.

The language used by this court in Steamboat Orleans *vs.* Phœbus, 11 Peters, 167, shows even more plainly, by a negative instance, that the present contract is in its nature maritime. It was claimed in that case, that though the *master* could not by the admiralty law have a lien on the vessel for his wages, yet, as the Louisiana statute gave him a *lien*, it might, under the rule laid down in Peyroux *vs.* Howard, be enforced in admiralty. This court, in overruling the point, said: "That decision does not authorize any such conclusion * * The contract (in Peyroux *vs.* Howard) was treated as a maritime contract, and the lien under the State laws was enforced in the admiralty, upon the ground, that the court under such circumstances had jurisdiction of the contract as maritime; and thus the lien, being attached to it, might be enforced according to the mode of administering remedies in the admiralty." Thus, the *distinction* is clearly made between the *cause of action* and the *method of proceeding;* and it is shown that it is the *nature of the contract*, the fact that it is *maritime*, which gives jurisdiction of the subject-matter; while the mere method of enforcing the right, and that alone, depends upon the existence or non-existence of the State lien. The opposite position, indeed, implies that any cause of action, no matter what its nature, would be enforceable in admiralty, provided the local law gave a lien; yet so far is this from being the case, that even *building contracts*, for which most of the local laws give liens, and which certainly relate to the vessel, are rejected as non-maritime, as we have seen.

In Morewood *vs.* Enequist, 23 Howard, 491, this court, in remarking upon the decision in People's Ferry Company *vs.* Beers, say, "as a cumulative argument, it was stated the act of Congress of 1789 was not intended to conflict with the rights of the State tribunals to enforce contracts governed by their own laws, *and not strictly of a maritime nature.*"

In the Steamer St. Lawrence, 1 Black, 522, this court said: "The case of the General Smith, (4 Wheat., 438,) was decided

upon these principles, and the right to proceed against the *property* is regarded as a mere question of *process*, and not of *jurisdiction*. And the court held, that where, upon the principles of the maritime code, the supplies are *presumed* to be furnished *on the credit of the vessel*, or where a *lien* is given by the local law, the party is entitled to proceed *in rem* in the admiralty to enforce it; but where the supplies are presumed by the maritime code to be furnished on the *personal credit* of the owner or master, and the local law gives him no lien, *although the contract is maritime*, yet he must seek his *remedy* against the *person*, and not against the *vessel*. In either case, the contract is equally within the jurisdiction of a court of admiralty."

If, then, the contract is maritime; if the cause of action be one of admiralty cognizance, the State court had no power to issue process *in rem* upon it; or (to use the words of this court in the Ad. Hine Case) "if the facts of the case before us in this record constitute a cause of admiralty cognizance, then the remedy, by a direct proceeding against the vessel, belonged to the Federal courts alone, and was excluded from the State tribunals." (The Moses Taylor, 4 Wall., 411; The Hine *vs.* Trevor, 4 Wall., 555.)

Upon the faith of the decisions in the Moses Taylor and the Ad. Hine Cases, and acting, not upon any mere *dicta*, but upon the principles upon which the decisions in those cases are by this court declared to be based, the highest court in New York has declared the act of its own legislature to be unconstitutional, so far as it gives the process *in rem* in case of a contract for supplies furnished in New York to a vessel owned in that State; and other courts, both State and national, have been unable to arrive at any other conclusion. (The Josephine, 39 N. Y.; Jackson *vs.* Steam-propeller Kinnie, Am. Law Register for August, 1869, p. 470.

JOHN H. RANKIN,
*For Plaintiff in Error.*

